

NAS PAXRIV INSTRUCTION 12550.1A

From: Commanding Officer

Subj: PREMIUM PAY FOR CIVIL SERVICE EMPLOYEES

Ref: (a) 5 Code of Federal Regulations 532
(b) 5 Code of Federal Regulations 550
(c) 5 Code of Federal Regulations 551
(d) Fair Labor Standards Act

Encl: (1) Basic Overtime Provisions
(2) Overtime During Travel
(3) Premium Pay for Training, Attending a Lecture, Meeting or
Conference
(4) Holiday Pay
(5) Sunday Pay
(6) Night Pay Differential

1. Purpose. To publicize employee entitlement to premium pay as established by references (a) through (d).

2. Cancellation. NAS PAXRIV Instruction 12550.1.

3. Scope. Applies to all personnel receiving personnel services from the Human Resources Office (HRO).

4. Background. References (a) through (d) establish policy for various premium pay entitlements of civil service employees. Supervisors have frequently raised questions concerning employees' entitlements to premium pay. This instruction should assist supervisors in making proper determinations regarding employee premium pay entitlement.

5. Action. All supervisors shall comply with enclosures (1) through (6). Questions regarding premium pay shall be referred to the Service Teams Division, HRO.

6. Review. The Director, HRO shall review this instruction annually and make necessary changes.

PAUL E. ROBERTS

Distribution:
Distribution List III

1. Wage Grade Employees. Wage Grade (WG) employees shall be paid overtime pay per Sections 5544 and 5550 of Title 5, United States Code (U.S.C.) or under the provisions of the Fair Labor Standards Act (FLSA), whichever provides the greater overtime benefit.

2. General Schedule Employees. General Schedule (GS) employees shall be paid overtime per Section 550.113 of Title 5, Code of Federal Regulations (CFR) or, if non-exempt, under the provisions of the FLSA, whichever provides the greater overtime benefit.

3. FLSA Status. An employee's status as exempt or non-exempt under the FLSA is listed in Block 35 of Standard Form 50-B (Notification of Personnel Action). Questions regarding how this status was determined should be referred to the Service Teams Division, Human Resources Office (HRO).

4. Effect of Leave on Overtime Pay

a. Title 5 overtime. Hours during which an employee is absent from duty on paid leave are considered hours of work in determining overtime pay entitlements. Hours during which an employee is absent from duty on leave without pay are not considered hours of work in determining whether the employee is entitled to overtime pay for work performed in excess of 8 hours in a day or 40 hours in a week.

b. FLSA overtime. Generally, paid periods of non-work (e.g., leave, excused absence) are not considered hours of work for determining overtime pay entitlements. Paid non-work periods are considered hours of work **ONLY** for employees who receive:

(1) Annual premium pay for standby duty;

(2) Annual premium pay for administratively uncontrollable overtime;

(3) Overtime pay for regularly scheduled overtime work (work scheduled in advance of the administrative workweek).

5. Callback Overtime Work. Irregular or occasional overtime work performed on a day when work was not regularly scheduled for the employee, or for which the employee has been required to return to the place of employment, shall be considered to be at least 2 hours in duration regardless of whether the employee performs work for 2 hours. This is an entitlement arising strictly under the Title 5, CFR.

6. Computation of GS Overtime Work Under Title 5

Encl (1)

NASPAXRIVINST 12550.1A

a. Time spent in principal activities. Principal activities are the activities an employee is employed to perform. They are activities performed during the regularly scheduled workweek (including regularly scheduled overtime work) and during periods of irregular or occasional overtime work officially ordered and approved. An employee is to be compensated for every minute of regular overtime work.

b. Time spent in pre-shift or post-shift activities. A pre-shift activity is preparatory activity an employee performs prior to their principal activities. A post-shift activity is a concluding activity performed after completion of the principal activities. Pre-shift/post-shift activities are not principal activities.

(1) If management determines that a pre-shift/post-shift activity is closely related and indispensable to successful performance of an employee's principal activities, and total time of such pre-shift/post-shift activity exceeds 10 minutes daily, all time spent in that activity is credited as hours of work.

(2) If pre-shift/post-shift activity is compensable as hours of work, management shall schedule the time period for the employee to perform the activity. In no case shall the time credited for the pre-shift/post-shift activity exceed the time scheduled for its performance.

(3) A pre-shift/post-shift activity not closely related to the performance of principal activities is considered a preliminary or postliminary activity, is excluded from hours of work and is not compensable.

EXAMPLES: The courts have determined that the following pre-shift/post-shift activities are closely related to principal activities and are considered work:

- Sharpening knives by knifemen in a meatpacking plant;
- Changing clothes and showering in a battery plant where the manufacturing process involves extensive use of caustic and toxic materials. (Ordinarily, changing clothes before and after work is considered a preliminary or postliminary activity. It is considered work only when extraordinary circumstances make clothes changing indispensable to performance of principal activities and is required by law, rule or nature of the work.)

The following activities have been considered non-compensable preliminary or postliminary duties:

- Waiting in line to check in or out;
- Checking an assignment board;

Encl (1)

- Opening doors and turning on heat and lights; and
- Washing up or showering.

c. For employees whose rate of basic pay does not exceed the minimum rate of GS-10, the overtime rate is one and a half times the hourly rate of basic pay. For employees whose basic pay exceeds the GS-10 minimum rate, the overtime rate is one and a half times the hourly rate of the GS-10 minimum rate.

d. An employee is paid for overtime work on a Sunday or a holiday at the same rate as overtime paid on any other day.

e. Hours of night, Sunday or holiday work are included in determining for overtime pay purposes the total number of hours in the administrative workweek.

7. Computation of WG Overtime Under Title 5

a. An employee regularly assigned to a night shift, who performs overtime work which extends into or falls entirely within a day shift, receives overtime pay computed on the night rate.

b. When overtime is performed on a non-workday, the employee receives overtime pay computed on the rate of the employee's last regularly scheduled shift.

c. An employee regularly assigned to a rotating schedule involving work on both night and day shifts, who performs overtime work falling entirely within or extending into the succeeding shift, receives overtime pay computed at the rate of the regularly scheduled shift in effect for that day.

8. Foreign Exemption From the FLSA. An employee exempt under the foreign exemption, found at Section 13(f) of the FLSA, is not subject to the FLSA overtime provisions. The foreign exemption applies to employees permanently stationed in exempt area. "Exempt area" means any foreign country, or any territory within the jurisdiction of the United States **OTHER THAN** the following: Puerto Rico, Virgin Islands, Outer Continental Shelf Lands, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island.

a. The foreign exemption applies to an employee on temporary duty who is **NOT** permanently stationed in an exempt area, but who performs all hours of work in a given workweek in a non-exempt area.

b. The foreign exemption does not apply to an employee permanently stationed in an exempt area for any workweek in which the employee performs any hours of work in a non-exempt area.

Encl (1)

NASPAXRIVINST 12550.1A

9. Compensatory Time

a. WG employees. When Office of Personnel Management (OPM) regulations are issued and adjustments are made to the payroll system, WG employees may choose between overtime and compensatory time.

b. GS employees (FLSA entitlement). A non-exempt employee earning overtime under the FLSA may be granted compensatory time-off in a subsequent workweek **PROVIDED:**

(1) The employee is entitled to overtime under Section 550.113 of Title 5, CFR that equals or exceeds the FLSA overtime entitlement; and

(2) The employee makes a written request for compensatory time, in lieu of overtime payment.

c. GS employees (Title 5 CFR entitlement). An employee whose rate of basic pay is equal to or less than the maximum rate for GS-10 may request compensatory time in lieu of overtime payment, for an equal amount of irregular or occasional overtime work. (Office of Personnel Management regulations define "irregular or occasional overtime work" as work not part of the regularly scheduled administrative workweek, i.e., work not scheduled **IN ADVANCE** of an administrative workweek. Therefore, if management knows the specific work requirements in advance of the administrative workweek and has the opportunity to determine which employee must be scheduled or rescheduled to meet that work requirement, management shall schedule that employee's workweek so that it corresponds with the actual work requirements. An employee must receive premium pay for regularly scheduled overtime work.)

Encl (1)

4

NASPAXRIVINST 12550.1A

OVERTIME DURING TRAVEL

1. Introduction

a. To determine an employee's pay entitlement while on travel, the supervisor must first establish the employee's regularly scheduled working hours and regular workweek. For shift employees, regular working hours for travel time purposes will be based on their normal approved work schedule. For employees on the **FIRST-40 SCHEDULE**, the **SUPERVISOR** will determine if there is a **NORMAL** pattern of days worked and/or arrival/departure times on an individual basis. If so, this pattern will be considered the employee's normal work schedule for the purposes of this enclosure. Where there is no constant or predominant pattern of workdays and/or arrival/departure times for the specific individual, the **SUPERVISOR** may average the employee's arrival/departure times over the previous two week period and use this time as a reference point for determining the employee's normal work schedule for purposes of this enclosure. If the days worked and/or arrival/departure times for the previous two week period were atypical for the employee, the supervisor may use the activity's normal business hours (e.g., 0730-1600, Monday - Friday) as the employee's normal work schedule.

b. Once the supervisor has determined the employee's schedule, overtime determinations are made based on the employee's (Fair Labor Standards Act (FLSA)) status. For nonexempt employees (covered by both the FLSA and Title 5, United States Code (USC)) and exempt employees (covered by Title 5 only), travel **DURING** regular business hours is considered "hours of work" and is compensated accordingly. However, time spent **OUTSIDE** regular working hours is treated differently under the two statutes. This enclosure will outline the conditions under which an employee traveling outside his or her regularly scheduled hours and workdays will be paid.

2. Travel Times as Hours of Work Under Title 5 (Exempt Employees)

a. This section applies to employees being paid under Title 5, i.e., GS employees who are **EXEMPT** from the provisions of the FLSA, and nonexempt employees if compensation under Title 5 would be greater than compensation under FLSA.

b. When travel is performed **OUTSIDE** the employee's **REGULARLY SCHEDULED WORKWEEK AND REGULAR OVERTIME**, the employee is not necessarily entitled to overtime compensation. Any entitlement an employee has to overtime compensation while traveling is governed by Title 5 USC 5542(b)2(B). It provides that time spent in a travel status away from the official duty station outside the regular workweek is not "hours of work" unless the travel meets one or more of the following criteria:

(1) Actual work is performed by the employee while traveling. If a supervisor **ORDERS** and **APPROVES** work for an employee to perform while traveling, the time spent performing that work is "hours of work" even though

Encl (2)

NASPAXRIVINST 12550.1A

it is the kind of work that would ordinarily be performed at the employee's place of business (e.g., preparing a report, reviewing specifications, etc.). Premium pay, if warranted and authorized, will be limited to time actually spent working.

(2) The travel is incidental to the performance of work. Generally, this criteria extends to work which **CAN ONLY BE PERFORMED** while traveling. Examples include carrying classified material or driving a government owned vehicle for delivery to a distant location where that is the purpose of the travel. But, if an employee incidentally transports or delivers items or personnel when the primary purpose of his/her travel is for other reasons, then such travel is not compensable as overtime work.

(3) The travel is carried out under arduous conditions. Arduous conditions, as used in 5 USC 5542, are conditions which impose a substantial burden on the traveler beyond that normally associated with travel, such as imposed by unusually adverse terrain, severe weather conditions and remote sites inaccessible by the ordinary means of transportation. The Comptroller General has held that absent some very unusual circumstances, travel by motor vehicle or by common carrier, including airlines and trains, is not travel under arduous conditions, even though it may occur at night, continue over an extended period of time, and involve some risks.

c. The travel results from an event which could not be scheduled or controlled administratively, including travel to and from such an event to the employee's official duty station. For compensation to be awarded under this

provision, the Comptroller General requires that two conditions be met. First, the event could not be scheduled or controlled administratively by **ANY** agency of the Government. For example, Government sponsored training courses generally are scheduled to start at the beginning of the workweek, and usually start at 9:00 a.m. daily. Therefore, attendance at training centers away from an employee's duty station will require travel outside normal working hours. Since the agency conducting the training can schedule the hours of training, the training course is an event which can be scheduled or controlled administratively; thus, employees who attend the course will not be paid for travel time outside their normal working hours/days regardless of whether employed by the agency providing the training or by another agency. The timing of conferences, meetings or test evaluations are normally controllable by the Government. Time spent driving a private vehicle as a means of transportation to a temporary duty location is not considered "hours of duty" unless the travel results from an administratively uncontrollable event. Examples of non-controllable events are a catastrophe (fire, flood or other emergency), or an event which is scheduled or controlled by non-Government persons or organizations which required the services of an employee. **NOTE:** This does not include contractors because their activities with the Government are generally delineated by an official Government contract.

Encl (2)

2

NASPAXRIVINST 12550.1A

The second of the "administratively uncontrollable" criteria is that the unscheduled and uncontrolled event must result in an "immediate official necessity" for the travel. If there is adequate notice of the event to permit scheduling of travel during regular business hours, then travel occurring outside of these hours is not compensable.

3. Travel Time as "Hours of Work" Under FLSA (Nonexempt Employees)

a. This applies only to employees who are covered by the provisions of the FLSA (i.e., Nonexempt employees).

b. "Hours of Work" Under FLSA. Whether time spent in authorized travel by a nonexempt employee is to be considered "hours of work" under the FLSA depends upon the kind of travel involved. This section contains basic principles for determining whether travel time outside regular working hours is properly considered hours of work under the FLSA:

(1) Travel from home to work (work to home);

(2) Travel within the limits of the employee's official duty station;

(3) Travel away from the official duty station and the travel involves the performance of work while traveling (including travel as a driver of a private or government vehicle); and

(4) Travel away from the official duty station as a passenger in a public or private conveyance. A further consideration for determining hours worked for travel as a passenger is whether the employee travels to and returns from a temporary duty station during the same day **OR** whether the employee remains overnight at the temporary duty station.

The definitions in sub-section "c" and explanation of basic principles in sub-sections "d" through "f", together with the examples in Tables 1 through 6, should provide sufficient basis for sound determinations as to whether the time spent traveling by nonexempt employees should be considered "hours of work" under the FLSA.

c. Definitions

(1) Authorized Travel. Travel which is performed: (a) under the direction or control of a responsible official and (b) for the benefit of the government.

(2) Official Duty Station. Defined in Federal travel regulations as the employee's designated post of duty, the limits of which will be "...the corporate limits of the city or town in which the employee is stationed. If the employee is not stationed in an incorporated city or town, the official

Encl (2)

3

NASPAXRIVINST 12550.1A

station is the reservation, station or established are, or in the case of large reservations, the established subdivision thereof having definite boundaries within which the designated post of duty is located."

d. Home to Work Travel (See Table 1). Travel by an employee to and from work before and after the regular workday is a normal incident of employment. Normal travel from home to work is not counted as hours worked. However, there are certain situations where an employee may perform an activity as a requirement of his/her employing agency while traveling from and to work that could result in such travel time being considered hours worked. See Table 1 for examples of home to work travel as "hours of work" under FLSA.

e. Travel Within the Limits of the Official Duty Station (See Table 2). Time spent by an employee in authorized travel as part of a job assignment during regular working hours will be counted as hours worked. This principle applies to time spent traveling by an employee either as a driver of a vehicle or as a passenger in a vehicle) **DURING** regular working hours within the limits of the official duty station. In addition, time spent traveling by an employee within the limits of the official duty station **BEFORE** or **AFTER** regular working hours which is directly associated with the performance of a given job assignment and serves to extend the employee's regular tour of duty is also considered hours worked. Normal home to work (work to home) travel and bona fide meal period are **NOT** included in hours worked. See Table 2 for examples of travel within the limits of the official duty station as "hours of work" under FLSA.

f. Travel Away From the Official Duty Station

(1) Work Performed While Traveling (See Tables 3 and 4). Any work which an employee is required to perform while traveling will be counted as hours worked. In addition, a nonexempt employee who at the request and on the behalf of the employing agency is required to drive a private or government vehicle, pilot an aircraft or a boat to a given destination is working while traveling and will have such travel time counted as hours worked. Bona fide meal periods are deducted from hours worked. Further, under certain conditions, sleeping periods **OR** times when an employee is relieved from duty

are **NOT** included in hours worked (see Notes 1 and 2 below). See Tables 3 and 4 for examples of work performed while traveling away from the official duty station as "hours of work" for nonexempt employees.

NOTE 1: When an employee is required to be on duty (traveling continuously) for 24 hours or more, authorized sleeping periods of **NOT** more than 8 hours may be deducted from the hours worked, provided adequate sleeping facilities are furnished and the employee can usually enjoy an uninterrupted sleeping period. However, if the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked and if the employee cannot get at least five continuous hours for sleep during the sleeping period, the entire time is working time.

Encl (2)

NOTE 2: When an employee is completely relieved from duty for a period long enough to enable the employee to use the time effectively for his/her own purpose, this off duty period is **NOT** hours worked. For example: a driver of an automobile terminates his travel at 6 p.m. to obtain lodgings for the night and commences his travel at 8 a.m. the next morning; or a security specialist guarding classified equipment in transit aboard a train is relieved from duty at 6 p.m. and is not scheduled to report for duty until 6 a.m. next morning.

(2) Travel as a Passenger that Keeps an Employee Away from Official Duty Station Overnight. When an employee performs authorized travel as a passenger to a temporary duty station outside the limits of the official duty station and as a result of such travel is required to remain at the temporary duty station **OVERNIGHT** (i.e., the employee is required to secure lodgings at the temporary duty station for one night or more), such travel is in excess of a one-day assignment and, therefore is considered to be travel that keeps an employee away from the official duty station overnight. An employee who performs such travel **DURING** regular working hours on regular workdays is substituting travel for other duties during these hours and the time spent traveling is hours worked. The same principle applies to such travel as a passenger **DURING** corresponding hours on non-workdays (hours which correspond to an employee's regular working hours on regular working days). However, time spent traveling as a passenger that occurs **OUTSIDE** regular working hours (**AND OUTSIDE** corresponding hours on non-workdays) is **NOT** considered hours of work if the travel keeps the employee away from the official duty station overnight and the employee performs no work while traveling. Thus, if an employee regularly works from 9 a.m. to 5:30 p.m. (with a 30 minute meal period) from Monday through Friday, travel performed during these hours on any of the 7 days of the workweek (including travel time on Saturday, Sunday or on a holiday) is working time. Bona fide meal periods are deducted from hours worked. In addition, time spent waiting at a common carrier terminal in excess of normal waiting time is **NOT** included in hours worked. See Note 3 below for the definitions of normal working time.

NOTE 3: The rules of a common carrier may require an employee to arrive at a carrier terminal at a designated predeparture time (e.g., 1 hour prior to the scheduled departure time of the common carrier). Such waiting time at the common carrier terminal from designated predeparture time until scheduled departure time of the common carrier is considered normal waiting time and is counted as hours worked. Furthermore, when an employee's travel is interrupted (i.e., the employee travels to an intervening common carrier

terminal and has to wait for a connecting flight to continue traveling to a temporary duty station) usual waiting time at the intervening common carrier terminal is considered normal waiting time and is counted as hours worked.

(3) Travel as Passenger on a One-Day Assignment to and returning from a temporary duty station outside the limits of the official duty station during the same day is viewed as a part of the employee's principal duties for that particular day. The time spent in authorized travel as a passenger (by

Encl (2)

5

NASPAXRIVINST 12550.1A

common carrier or by automobile) during the one-day assignment is considered working time. Bona fide meal periods are deducted from hours worked. Normal home to work (work to home) travel and time spent waiting at a common carrier terminal in excess of normal waiting time which occurs outside regular working hours are **NOT** included in hours worked (see Note 3).

See Tables 5 and 6 for examples of travel as a driver or passenger on a one-day assignment away from the official duty station as "hours of work" under FLSA.

4. Special Travel Situations

a. Travel by Mode of Transportation Other than that Selected by the Employer. When an employee for personal reasons, such as an aversion to flying, does not use the mode of transportation selected by the employer, the employee will be credited with the lesser of: (1) that portion of the **ACTUAL** travel time which is to be considered working time under these instructions; **OR** (2) that portion of the **ESTIMATED** travel time which would have been considered working time under these instruction had the employee used the mode of transportation selected by the employer.

b. Travel at a Time Other than that Selected by the Employer. The employer is responsible for specifying, within reasonable limits, the time during which authorized travel will be performed by its employees. To the maximum extent practicable, the travel of an employee away from the official duty station will be scheduled within the employee's regularly scheduled workweek. When an employee for personal reasons travels at a time other than the time selected by the employer or for personal convenience travels by an indirect route, or interrupts such travel, the employee will be credited with the lesser of: (1) that portion of the **ACTUAL** travel time which is to be considered working time under these instructions, **OR** (2) that portion of the **ESTIMATED** travel time which would have been considered working time under these instructions had the employee traveled at the time and by the route selected by the employer.

c. Travel Which Involves Two or More Time Zones. When an employee's travel involves two or more time zones, the time zone from the point of **FIRST** departure for the workday will be used to determine whether the employee performed the travel during regular working hours (or during corresponding hours on non-workdays). For example: If an employee commences travel on Monday in Washington, D.C. with a short stop-over in Denver, Colorado and then travels to Los Angeles, California later that same day, the Eastern time zone (point for **FIRST** departure for that workday) will be used to determine whether the travel was performed during the employee's regular working hours. If the same employee later returns from Los Angeles, California to Washington, D.C.

on Saturday (a non-workday), the Pacific time zone will be used to determine whether the travel was performed by the employee during hours which correspond to his/her regular working hours.

Encl (2)

TABLE 1
HOME TO WORK TRAVEL AS "HOURS OF WORK"
UNDER FLSA (NONEXEMPT EMPLOYEES)

<u>Kind of Travel Involved:</u>	<u>Is travel time outside regular working hours "hours of work"?</u>
<i>A. Home to work - Normal Situation</i>	
Normal home to work (work to home) travel.	NO
Employee drives a Government vehicle home (as a requirement of employing agency) to respond to emergency calls immediately from his/her home.	YES (1)*
Employee drives a Government vehicle home (as a requirement of employing agency) to transport other employees home to work (or job site).	YES (1)(4)
Employee reports at a designated meeting place and drives a vehicle (as a requirement of employing agency) to transport other employees or equipment to a job site.	YES (2)
Employee reports at a designated meeting place and is transported (as a passenger) by Government vehicle to a job site.	NO
Employee reports at a designated meeting place (receives instructions, performs other work or picks up and carries tools) and is transported (as a passenger) by a Government vehicle to a job site.	YES (2)
<i>B. Home to Work - Emergency Situation</i>	
Employee (at home) receives an emergency call outside regular working hours to return (travel) to normal duty location (or another job site within the limits of the official duty station).	NO
Employee (at home) receives an emergency call outside regular working hours to travel to a temporary duty station (outside the limits of the official duty station) and distance traveled is greater than normal home to work travel.	YES (3)

NASPAXRIVINST 12550.1A

* Explanatory Notes for Table 1:

(1) All time spent driving the vehicle home to work (work to home) is hours worked.

(2) The travel from home to the designated meeting place (and return) is normal home to work travel. However, the performance of work or other activity which is an integral part of the employee's job (e.g., picking up tools or receiving instructions at the designated meeting place) constitutes the commencement of the employee's workday. All subsequent travel (to a job site and return) is hours worked.

(3) If the **distance** to the temporary duty location (outside the limits of the official duty station) is in excess of the **distance** from the employee's home to the normal duty location, the entire time spent traveling from the employee's home to the temporary duty location and return is hours worked. Conversely, if the **distance** to the temporary duty location is equal to or less than the **distance** from the employee's home to normal duty location, the time spent traveling to the temporary duty location and return is **not** hours worked.

(4) The Comptroller General has determined that a nonexempt employee who drives a government vehicle between a temporary duty site and lodgings during non-duty hours is not entitled to overtime pay even though he transports another employee, since use of government vehicles cannot be considered a job requirement. Issue presented to the Comptroller General was whether motor vehicle operators (MVO) who drove between Nanossa Range (their temporary duty station) and their motel during hours outside their normal workweek were entitled to overtime. One of the MVOs drove the vehicle and the other was a passenger. The agency maintained that the government vehicle was provided as an accommodation to the employees. The alternative to providing a vehicle would be for employees to rely upon taxis and rental cars. The government vehicle was a less costly alternative. The Comptroller General found that the agency did not furnish the vehicle in order to require one employee to drive others. The reason for providing the vehicle applied whether one or more employees was involved. Since the employee was not driving the vehicle "home" as a requirement to transport other employees, such travel time cannot be considered hours of work.

TABLE 2
TRAVEL WITHIN THE LIMITS OF THE OFFICIAL DUTY STATION
AS "HOURS OF WORK" UNDER FLSA (1)* (NONEXEMPT EMPLOYEES)

<u>Kind of Travel Involved:</u>	Is travel time "hours of work"? (2)	
	<u>During Regular Working Hours</u>	<u>Outside Regular Working Hours</u> (3)
From home directly to job site before regular working hours	Not applicable	NO (4)
From normal duty location to job site	YES	YES
From job site to job site	YES	YES
From job site to normal duty location	YES	YES
From job site directly to home after regular working hours	Not Applicable	NO (4)

NOTE: For purposes of this table, the term "job site" means a duty location within the limits of the official duty station other than the employee's normal duty location.

* Explanatory Notes for Table 2:

(1) These rules apply to travel either as a driver of a vehicle **OR** as a passenger in a vehicle within the limits of the official duty station during the same day.

(2) Normal home to work (work to home) travel and bona fide meal periods are **NOT** included in hours worked.

(3) For travel time outside regular working hours to be compensable under this basic principle, the time spent traveling must be continuous with and serve to extend the employee's regular tour of duty.

(4) Travel from home directly to a job site within the limits of the official duty station is viewed as normal home to work travel. The same applies for travel from a job site directly to the employee's home after regular working hours.

Encl (2)

TABLE 3
WORK PERFORMED WHILE TRAVELING AWAY FROM THE OFFICIAL DUTY STATION
OVERNIGHT AS "HOURS OF WORK" UNDER FLSA (NONEXEMPT EMPLOYEES)

<u>Kind of Work Involved:</u>	<u>Is travel time outside regular working hours "hours of work"? (1)*</u>
Driver of an automobile, truck, bus or other vehicle (also see Table 4 for private vehicle)	YES
Pilot of an airplane, helicopter or other aircraft	YES
Pilot of a boat, barge or other vessel (NOT subject to the seaman exemption)	YES
Assistant driver or crew member assisting in the operation of a vehicle, aircraft or boat	YES
Passenger riding in a vehicle (See Table 5 for one-day travel)	NO (2)
Any other employee required to perform work while traveling; e.g.,	YES
- Courier carrying classified documents	
- Guard escorting a prisoner	
- Security specialist guarding classified or valuable equipment in transit	

* Explanatory notes for Table 3:

(1) Bona fide meal periods are deducted from hours worked. Under certain conditions sleeping periods **OR** periods when an employee is relieved from duty are **NOT** included in hours worked (see paragraph e.(1) of this instruction).

(2) If a passenger shares the driving of a vehicle with the driver, each is considered to be performing work while traveling **ONLY** for that portion of the trip during which he/she is actually driving the vehicle.

Encl (2)

TABLE 4
OVERNIGHT TRAVEL AS A DRIVER OF A PASSENGER VEHICLE
TO A TEMPORARY DUTY STATION AS "HOURS OF WORK" UNDER FLSA

*Travel as a Driver That Keeps an Employee Away
From the Official Duty Station Overnight **

TABLE 4A: Travel to the **FIRST** Temporary Duty Station

(and Return from the **LAST** Temporary Duty Station)

If an employee drives a <u>vehicle</u> : (1)**	is the travel time outside regular working hours "hours of work"? (2)
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From home directly to a TDY station	YES (3)
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From home directly to temporary lodging	YES
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From temporary lodgings to TDY station (or return)	NO
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From a TDY station directly to his/her home	YES (3)
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From temporary lodgings directly to his/her home	YES
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* If an employee drives himself/herself in a passenger vehicle **outside regular working hours (including outside corresponding hours on a non-workday)** directly from his/her home to a temporary duty station, the employee shall only have counted as "hours of work" the time spent driving which is in excess of normal home to work travel. This deduction of normal home to work travel is also appropriate when a driver of a passenger vehicle picks up and drives another employee or group of employees directly to a temporary duty station, provided of course, the driver was not specifically required to do so by the employing agency. On the other hand, if the employee drives from his/her home directly to **temporary lodgings** at the temporary duty station (or between lodgings at one temporary duty station and another temporary duty station) this is **NOT** considered home to work travel and it cannot be deducted from compensable travel time.

** Explanatory notes for Table 4 are listed below Table 4B on the next page.

Encl (2)

NASPAXRIVINST 12550.1A

TABLE 4B: Travel to a Second (or subsequent) Temporary Duty Station

If employee drives <u>a vehicle</u> : (1)*	and if 2 nd TDY station is <u>located</u> :	and if the <u>employee</u> :	is the travel time outside regular hours <u>"hours of work"</u> ? (2)
From 1 st temporary lodgings	within limits of 1 st TDY station	NA	NO
To 2 nd TDY job site/ station	outside limits of 1 st TDY station	returns to 1 st TDY station same day	YES (5)(6)

		remains overnight at 2 nd TDY station	YES (5)(7)
From 1 st temporary lodgings	within limits of 1 st TDY station	NA	NO
To 2 nd temporary lodgings	outside limits of 1 st TDY station	remains over- night at 2 nd TDY station	YES
From 1 st TDY station	within limits of 1 st TDY station	NA	NO
To 2 nd temporary lodgings	outside limits of 1 st TDY station	remains over- night at 2 nd TDY station	YES

* Explanatory Notes for Table 4:

(1) In contrast to home-to-work situations covered herein, it should be noted that if an employee drives a vehicle from his/her official duty station directly to a temporary duty station (or from the 1st temporary duty station directly to a subsequent temporary duty station), the travel time is hours worked regardless of whether the temporary duty station (job site) is located within **OR** outside the limits of the official duty station. The same rule applies for the return trip.

(2) All travel time as a driver of a vehicle during regular hours is hours worked.

(3) **The employee** will be compensated for the time spent driving which is **in excess of** normal home-to-work travel. (NOTE: This deduction of normal home-to-work travel from the total travel time involved is appropriate only when the home-to-work portion of the travel is performed outside regular working hours, which also means outside corresponding hours on non-workdays.)

Encl (2)

(4) If the employee, for personal reasons, does not use temporary lodgings provided at the temporary duty station and commutes **daily** from home, the daily home to work travel is not working time. Only the employee's travel time in excess of normal home to work travel to the **first** temporary duty assignment and from the **last** temporary duty assignment is considered hours worked.

(5) The employee will be compensated for the time spent driving which is in excess of normal commuting time at the first temporary duty station (i.e., travel time in excess of normal travel from the first temporary lodgings to the first temporary duty station).

(6) The excess travel time to the employee's temporary lodgings on the return trip is also hours worked.

(7) If the employee, for personal reasons, does not use temporary lodgings provided at the second temporary duty station, the daily commuting time on the second day (and subsequent days) is **NOT** compensable.

Encl (2)

13

NASPAXRIVINST 12550.1A

TABLE 5
ONE-DAY ASSIGNMENT TRAVEL AS A DRIVER OF A PASSENGER VEHICLE
TO A TEMPORARY DUTY STATION AS "HOURS OF WORK" UNDER FLSA

Travel as a Driver on a One-Day Assignment
(to and return from a temporary duty station during the same day)

<u>If an employee drives a vehicle:</u> (1)*	<u>and if:</u>	<u>is travel time outside regular working hours "hours of work"?</u> (2)
From home directly to TDY station/job site	the job site is located within the limits of official duty station	NO
	the TDY station is located outside the limits of official duty station	YES (3)
From a TDY station/	the job site is	NO

job site directly to
his/her home

located within the
limits of official
duty station

the TDY station is
located outside the
limits of official
duty station

YES (3)

* Explanatory notes: see Table 4.

Encl (2)

14

NASPAXRIVINST 12550.1A

TABLE 6
TRAVEL AS A PASSENGER ON A ONE-DAY ASSIGNMENT
AWAY FROM OFFICIAL DUTY STATION
AS "HOURS OF WORK" UNDER FLSA (1)* (NONEXEMPT EMPLOYEES)

Kind of Travel Involved:

Is travel outside regular working
hours "hours of work"? (2)

A. Travel by Common Carrier

Travel time **from home to common carrier
terminal**

NO (3)

Normal waiting time at terminal prior to
scheduled departure time of common carrier

YES (4)

Travel time from scheduled departure time
from the **terminal** to arrival time at the
terminal at point of destination

YES

Usual waiting time which interrupts travel

YES (5)

Travel time from **terminal** at point of
destination to **temporary duty station**

YES

B. Travel by Automobile

Travel time **from official duty station** YES
to temporary duty station

Travel time **from home directly to temporary** YES (6)
duty station

(The same rules apply for travel time and waiting time on the return trip **from the temporary duty station to the employee's official duty station** or directly to the **employee's home.**)

NOTE: For purposes of this table, the term "temporary duty station" means a duty station outside the limits of the employee's official duty station.

* Explanatory Notes for Table 6:

(1) All travel time during regular working hours (excluding bona fide meal periods) is hours worked.

(2) Bona fide meal periods are deducted from hours worked.

Encl (2)

15

NASPAXRIVINST 12550.1A

(3) Since, except for the one-day assignment, the employee would have had to report to his/her normal duty location, the travel time between the employee's home and the common carrier terminal is **NOT** included in hours worked. However, if (1) the common carrier terminal is located outside the limits of the official duty station **AND** (2) the employee's travel time from home to common carrier terminal is in excess of normal home to work travel, the employee will be credited with the excess travel time as hours worked.

(4) Normal waiting at the terminal from designated predeparture time until scheduled departure time of the common carrier is hours worked. Any waiting time in excess of normal waiting time is **NOT** hours worked.

(5) When an employee travels to an intervening common carrier terminal and has to wait for a connecting flight to continue traveling to a temporary duty station, the usual waiting time at the intervening common carrier terminal is normal waiting time and is hours worked.

(6) The employee will be credited with the lesser of (1) the **actual** hours worked for the time spent traveling to the temporary duty station (excluding normal home to work travel), **OR** (2) the **estimated** hours worked for such travel had the employee traveled directly from the official duty station to the temporary duty station.

Encl (2)

16

NASPAXRIVINST 12550.1A

PREMIUM PAY FOR TRAINING,
ATTENDING A LECTURE, MEETING OR CONFERENCE

1. **Exempt** employees are generally not entitled to premium pay for time spent in training except in the following situations:

a. An employee given training during a period of duty for which he or she is already receiving premium pay for overtime, night, holiday or Sunday work. For example, an activity with shifts of employees working around the clock finds it necessary to give some training on the job to each shift including the employees who regularly work at night. This exception does not apply to an employee assigned to full-time training at institutions of higher learning.

b. An employee given training at night because situations which he or she must learn to handle occur only at night. For example, an employee who must learn to operate radar equipment under both day and night conditions.

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c. An employee given  
training*****  
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[illegible]

*****r working hours.

4. Example. The following example is given as an aid in determining when premium pay may be received for time spent in a training status.

Encl (3)

Several Customs Patrol Officers were scheduled to attend Navy SEAL School to receive specialized training to assist them in their law enforcement duties. The training exceeded 40 hours a week and some of it occurred after 1800 since it dealt with situations occurring only at night. These were nonexempt General Schedule employees. Under the exception contained at section 1b. above, the agency did not have discretion to withhold premium pay from the affected employees. Furthermore, once the determination was made that the training was excepted from the general Title 5 prohibition against premium pay for training, overtime pay under the FLSA was also due for hours of work in excess of 40.

HOLIDAY PAY**1. Definitions**

a. **Holiday leave** is compensation given for designated legal holidays to all eligible employees regardless of whether or not they worked on the holiday. Holiday leave covers all employees **EXCEPT** intermittent employees, or employees paid at daily, hourly or piecework rates whose appointments are limited to 90 days or less **UNLESS** they are paid on a per annum basis or they currently have been employed for more than 90 days under one or more appointments without a break in service.

b. **Holiday premium pay** is given to all eligible employees for hours actually worked on a holiday which correspond to the employee's tour of duty, e.g., 0730 - 1600. Holiday premium pay is **IN ADDITION** to holiday leave for designated legal holidays. In effect, an eligible employee who works on holiday is compensated at twice his or her hourly rate. An employee is entitled to **AT LEAST** 2 hours of holiday pay when he/she is required to perform any work on a designated holiday. A minimum of 2 hours is paid whether or not the full 2 hours are worked.

c. **Overtime** is appropriate for work performed on a holiday which is outside the normal tour of duty, e.g., before 0730 or after 1600. Compensatory time may not be worked on a holiday except before or after the normal tour of duty.

2. **Application.** A full-time federal employee who works on a holiday is entitled to 8 hours of holiday leave, in addition to up to 8 hours holiday premium pay and night shift differential, and overtime pay as applicable. Employees are paid for overtime on a holiday at the same rate as for overtime on other workdays.

3. An employee in a non-pay status for the workdays immediately before **AND** after a holiday may not receive compensation for a holiday on which he or she performed no work since it is assumed that the individual would not have worked on the holiday if it had been a regular workday. However, if the employee is in a pay status either immediately before **OR** after a holiday, he/she is entitled to pay for the holiday regardless of whether he/she is on leave without pay or absent immediately succeeding or preceding the holiday.

4. **Part-time Employees.** When a holiday falls on a part-time employee's regularly scheduled workday, the employee shall be given holiday leave for the number of hours he/she was scheduled to work on that day. A part-time employee is not entitled to holiday benefits when a holiday falls on his or her non-workday and no work is performed by the employee.

Part-time employees will receive holiday premium pay for work performed on the holiday if the holiday falls within their regularly scheduled tour of duty. A part-time employee required to work on a holiday falling on a day which is not within their regular tour of duty is paid at his or her normal rate for the hours worked. A part-time employee is only entitled to holiday premium pay for work performed on the actual calendar holiday and not on the "in lieu of" holiday (a day which is to be treated as a holiday instead of the legal public holiday). When an "in lieu of" holiday falls on a part-time employee's regularly scheduled work day and the part-time employee is prevented from working because the activity is closed, the part-time employee will be excused with pay.

5. Intermittent Employees. Intermittent employees are not compensated for holidays on which they do not work and are compensated at straight rates only for any holiday work performed.

6. Employees Receiving Standby Premium Pay. Although an employee receiving annual standby premium pay may be excused from duty on a holiday without charge to leave, he/she may not be paid holiday premium pay when required to work on a holiday falling within his or her regularly scheduled tour of duty.

Encl (4)

SUNDAY PAY

1. Application. Sunday premium pay is for non-overtime work performed by a full-time General Schedule (GS) employee during a **REGULARLY SCHEDULED** daily

tour of duty when **ANY PART** of that daily tour of duty is on a Sunday and falls between midnight Saturday and midnight Sunday. For each non-overtime hour worked, an employee is entitled to Sunday premium pay (basic rate of pay plus 25 percent of the rate of basic pay). Premium pay for Sunday work is in addition to premium pay for holiday work, overtime pay or night pay differential.

Wage Grade (WG) employees whose **REGULARLY SCHEDULED** tour of duty includes an 8 hour period beginning at 11:00 or 11:30 p.m. Sunday and terminating on Monday is entitled to Sunday premium pay for the entire 8 hour period. There is no requirement for a minimum period of work on Sunday as a condition of entitlement to Sunday premium pay benefits under 5 United States Code (USC) 5544(a).

2. Regularly Scheduled Sunday Work. In order for an employee to be eligible for Sunday pay, the workweek must be "regularly scheduled" **WITHIN** the employee's **BASIC 40 HOUR WORKWEEK**. Generally, an employee whose workweek is normally Monday through Friday but who on one occasion has a workweek scheduled for Sunday through Thursday is entitled to premium pay for Sunday duty. The term "regularly scheduled 8 hour period of reference service", as used in Title 5 USC 5546(a), is intended to relate to the 40 hour weekly tour of duty generally established for Federal employees, normally 5 working days of 8 hours each.

Generally, full-time GS and WG employees whose regularly scheduled tour of duty includes a period of service between midnight Saturday and midnight Sunday are limited to 8 hours Sunday premium pay. However, there are some exceptions to this rule. If an employee performs work during a regularly scheduled 8 hour period of duty **WHICH IS NOT OVERTIME**, part of which is performed on Sunday, is entitled to premium pay for Sunday work for the entire period of service. Since a 24 hour period may be treated as a day, an employee who works shifts split into two 4 hour parts separated by 8 non-duty hours with each shift spanning two (2) calendar days, may be paid in excess of 8 hours of Sunday premium pay.

3. Unofficially Scheduled. Unofficial hours do not satisfy the criteria or "regularly scheduled work" required by Title 5. Thus, if an employee's official hours were 12 midnight to 8 a.m. Monday but he/she worked unofficial hours of 11:30 p.m. Sunday to 7:30 a.m. Monday, the employee would not be entitled to Sunday premium pay.

4. Leaves of Absence

Encl (5)

NASPAXRIVINST 12550.1A

a. Annual Leave. An employee may not be paid for Sunday premium pay for a leave status during any part of a regularly scheduled tour of duty on Sunday.

b. Military Leave. GS and WG employees whose regularly scheduled workweek includes Sunday and who are on authorized military leave are entitled to premium pay while on military leave.

5. Part-time Employees. Part-time employees are not entitled to Sunday premium pay under 5 USC 5546(a).

6. Examples. The following examples are given as an aid in computing pay for work performed on Sunday.

a. An employee whose basic workweek is Monday through Friday from midnight to 8 a.m., and whose regularly scheduled workweek includes daily overtime from 11:00 p.m. to midnight of the preceding night, is not entitled to Sunday premium pay for the 1 hour worked each Sunday before midnight. The fact that the FLSA requires overtime to be paid for work in excess of 40 hours in a week does not operate to change the employee's basic workweek under Title 5.

b. An employee works a regularly scheduled night shift from 7:00 p.m. to 3:00 a.m. the following day. The regularly scheduled tour includes shifts beginning at 7:00 p.m. Saturday and ending at 3:00 a.m. Sunday, and beginning at 7:00 p.m. Sunday and ending at 3:00 a.m. Monday. The employee is entitled to Sunday premium for both tours (total 16 hours), the one that begins on Saturday and ends on Sunday, and the second one that begins on Sunday and ends on Monday. The employee is also entitled to night differential for both tours of duty.

c. An employee working a rotating shift is scheduled to work from 1700 Saturday to 0100 Sunday and 0900 to 1700 on Sunday. The employee receives Sunday premium pay for each shift to the extent it is not overtime work. Therefore, the employee receives Sunday pay for the first 8 hour shift and for 7 hours of the second Sunday shift. He would then be entitled to 1 hour of overtime pay for the 1600-1700 portion of the second shift. Additionally, he would receive 7 hours of night differential for the first tour of duty.

Encl (5)

NIGHT PAY DIFFERENTIAL

1. Application

a. General Schedule (GS) Employees. Night pay differential is for **REGULARLY SCHEDULED** night work, including regularly scheduled overtime work, between the hours of 6:00 p.m. and 6:00 a.m. Generally, an employee is entitled to his or her basic rate of pay plus a night pay differential amounting to 10 percent of the individual's rate of basic pay. An employee may receive night pay differential in addition to overtime, Sunday premium pay or holiday pay. Night pay differential is not included in the rate of basic pay used to compute overtime, Sunday or holiday pay.

At a post outside the United States where the customary hours of business extend into the hours between 6:00 p.m. and 6:00 a.m., the head of the department may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and the end, respectively, of night work. Times so designated shall correspond reasonably with the customary hours of business in the locality.

b. Wage Grade (WG) Employees. Under Title 5 United States Code (USC) 5343(f), a prevailing rate employee is entitled to pay at his or her scheduled rate plus a night differential amounting to 7 and $\frac{1}{2}$ percent of that scheduled rate for **REGULARLY SCHEDULED** work when the **MAJORITY** of the hours occur between 3:00 p.m. and midnight. If the **MAJORITY** of the regularly scheduled non-overtime work is scheduled between 11:00 p.m. and 8:00 a.m., the night pay differential is 10 percent of the employee's scheduled rate. Night pay differential is part of the basic pay used to compute overtime, Sunday or holiday pay.

The term "majority of hours" used in Title 5 means that the number of whole hours must be greater than one-half the total number of hours worked (e.g., 5 hours including meals breaks for an 8 hour shift). Thus, an employee who works from 11:00 a.m. to 7:30 p.m. is not entitled to night pay differential since the majority of the hours scheduled do not occur between 3:00 p.m. and 11:00 p.m. If a WG employee works 4 hours between 3:00 p.m. and midnight, and 4 hours between 11:00 p.m. and 8:00 a.m., he is entitled to 7 and $\frac{1}{2}$ percent for the entire shift.

2. Overtime

a. GS Employees. When a GS employee has a **REGULARLY SCHEDULED** overtime assignment during night hours, the employee will be entitled to a night shift differential in addition to the overtime pay. Conversely, irregular overtime work (i.e., overtime scheduled during the workweek in which it occurs) performed at night is not eligible for night premium pay. Therefore, last minute overtime assignments due to unscheduled absences, etc., will not qualify for night pay.

Encl (6)

NASPAXRIVINST 12550.1A

Example: A GS employee has a regularly scheduled workweek of Monday through Friday, 1600-0030. Due to a project deadline, he is informed that he will be working three Saturdays in October. He is informed of this in advance of the first workweek in which the mandatory overtime will be worked. Therefore, in addition to overtime pay, the employee will receive 6 hours of night pay for the hours of 1800-0030.

Example: A GS employee regularly works Monday through Friday, 0600-1430. Due to the unplanned absence of an employee on the 1400-2230 shift, the first employee works two consecutive shifts. Since this overtime assignment was not scheduled in advance of the employee's administrative workweek, she will receive overtime compensation but no night differential. Had the second employee's absence been anticipated and the first employee scheduled to work the second shift in advance of start of the workweek, the employee would be eligible for night differential in addition to overtime.

b. WG Employees. If a WG employee performs overtime, the rate of compensation is computed on the shift on which the employee is **REGULARLY**

SCHEDULED. For instance, an employee regularly working the second shift will be computed on the second shift rate even though the hours of overtime work extend into the third shift. A WG employee is entitled to overtime pay for work in excess of 8 hours a day or in excess of 40 hours in an administrative workweek that is **OFFICIALLY ORDERED OR APPROVED** and is performed by the employee.

3. Absences

a. Holidays or in a Travel Status. Both WG and GS employees **REGULARLY** assigned to a night shift for which the night shift differential is payable, are entitled to the night shift differential for period of excused absence on a holiday or while in official travel status during the hours of his or her regular shift whether performing actual duty or not.

b. Absence on Leave. A GS employee is entitled to night pay differential for a period of paid leave only when the **TOTAL AMOUNT** of leave in a pay period, including both night and days, is less than 8 hours. The Comptroller General has held that night differential cannot be paid for **ANY** period of leave if the total amount of leave taken during the leave period is 8 hours or more. For example, an employee works the 2200-0630 shift. During the pay period, she takes 3 hours annual leave and 4 hours sick leave. She is entitled to night differential for this amount of leave. If she had taken 4 hours of annual leave and 4 hours of sick leave, she could not receive the differential since the ceiling of 8 hours had been reached.

WG employees **REGULARLY** assigned to a night shift on a full-time basis will, during periods of absence with pay, receive the night pay differential depending on the shift to which the employee is assigned at the time of going on leave (e.g., 7 and ½ or 10 percent).

Encl (6)

4. Part-time Employees

a. Part-time GS Employees on a regularly scheduled shift for which night shift differential is payable are entitled to the night pay differential for the hours worked. Since **INTERMITTENT EMPLOYEES** have no regularly scheduled tour of duty, they are ineligible to receive night pay differential.

b. Part-time WG Employees who work on a regularly scheduled shift of less than 8 hours are entitled to a night shift differential if a majority of hours are worked during a period in which a night shift differential is payable. **INTERMITTENT WG EMPLOYEES** are also entitled to receive night pay differential when appropriate.

Encl (6)